

**NJ STATE BOARD OF MEDICAL EXAMINERS
OPEN DISCIPLINARY MINUTES**

November 12, 2003

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, November 12, 2003 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor, Conference Center, Trenton, New Jersey for Disciplinary Matters Pending Conclusion, open to the public. The meeting was called to order by Mr. Glenn Farrell, Chairperson for Open Disciplinary Matters.

PRESENT

Board Members Criss, Farrell, Haddad, Harrer, Moussa, Paul, Perry, Ricketti, Robins, Rokosz, Trayner, Wallace, and Walsh.

EXCUSED

Board Members Chen, Desmond, Huston, Lucas, and Patel.

ALSO PRESENT

Assistant Attorney General Joyce, Deputy Attorneys General Dick, Ehrenkrantz, Flanzman, Gelber, and Simmons; Executive Director Roeder and Medical Director Gluck.

RATIFICATION OF BOARD MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE OCTOBER 8, 2003 OPEN DISCIPLINARY BOARD MINUTES AS SUBMITTED.

Drs. Harrer and Moussa were not present for approval of the minutes.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

10:00 a.m. BAIRD, David, M.D. (License # MA 24835)
(FLANZMAN, Steven N., Counseling D.A.G.)
SIMMONS, Mary Kate, D.A.G. for Complainant

Dr. Baird, Pro se

Matter was set down for a Plenary Hearing on the Attorney General's Complaint which was adjourned from the September 10, 2003 Board meeting regarding Dr. Baird's noncompliance of the enclosed Order Granting Limited Reinstatement of License entered into on June 23 2003.

Enclosed for the Board's review were the September 10, 2003 Board minutes along with copies of the October 3, 2003 Appearance letter; September 23, 2003 Consent Order; September 17, 2003 Interim Order to Refrain from Practice; September 10, 2003 Affidavit of Service; and the April 20, 1999 Final Order of Denial of Licensure in the matter of David Baird, M.D. Also attached was Dr. Baird's September 29, 2003 letter in response.

At the onset, Dr. Baird acknowledged that he was aware that he had a right to an attorney to represent him in these proceedings and that the potential effect of the hearing could result in action against his license. He wished to proceed pro se.

Representing the Attorney General, D.A.G. Simmons, in her opening statement, stated that the issue before the Board was whether Dr. Baird had been compliant with the Board's prior Order in which he was required to participate in treatment with Dr. Pedigo and/or the Physicians Health Program (the "PHP"). She proffered that the evidence would demonstrate that Dr. Baird has a long history of ignoring the Board's laws and Orders. She reminded the Board that in 1992, the Board revoked Dr. Baird's license to practice medicine and surgery in the State of New Jersey based on Dr. Baird's actions, inter alia, of sexual misconduct. In June 2000, she continued, Dr. Baird requested reinstatement. The Board granted a limited reinstatement of Dr. Baird's license. In its Order, the Board required as a condition of reinstatement that Dr. Baird participate in twice weekly psychotherapy sessions. The Order, she reminded the Board, further stated that the failure of Dr. Baird to abide by any terms of the Order could result in the immediate revocation of his license. She further offered that Dr. Baxter would testify that, in spite of at least two warnings, Dr. Baird went from twice weekly to once a week and then ultimately, to no sessions at all for various periods. Dr. Baxter would also testify that Dr. Baird, sua sponte, decided to alter the required forty-five minutes per session to only twenty-five minutes. She believed the evidence would demonstrate Dr. Baird's flagrant disregard of the Board's Order and requested that the Board revoke Dr. Baird's license.

After being sworn in, Dr. Baird, in his opening statement, stated that he disagreed with the Attorney General's characterization that his decisions concerning attending the psychotherapy sessions were in total disregard of the Board. He stated that he thought that because the PHP was aware of the changes, that the PHP, acting as the Board liaison, implicitly approved of the changes on behalf of the Board. He continued by recounting his history with the Board. At the time of the initial action, he was overseas participating in Desert Storm and believed his attorney would present evidence to the Board. His attorney did not show up and the Board revoked his license without the opportunity of hearing his evidence. Since the initial Board action, he asked the Board to believe that he has made a change in the principles by which he lives his life. He informed the Board that he lives by the principles of the Bible and assured the Board that he would never live in a way that was contrary to the teachings of the Bible. Over the past eleven years, he has had a stable marriage and would never do anything to jeopardize that relationship. He further explained that while his wife was stationed overseas in Iran, he missed a number of sessions because he was at that time, the primary caretaker for his seventeen year old son. He tried to do the best he could under the circumstances. While acknowledging he did not fulfill the terms of the Board Order to the fullest extent, he asked the Board to understand his circumstances.

D.A.G. Simmons called Dr. Baxter, Executive Medical Director of the PHP as a witness for the State. After being sworn in, Dr. Baxter testified that Dr. Baird first participated with the PHP in 1989 when he was referred for follow-up and evaluation concerning psychosexual issues. Dr. Baxter further explained that pursuant to the Board's Order, Dr. Baird was to meet with a representative of the PHP on a monthly basis. When Dr. Baxter reviewed his file on Dr. Baird, he testified that on a number of occasions, Dr. Baird was late, cancelled, or failed to appear without a cancellation. Overall, Dr. Baxter did not believe that Dr. Baird was compliant with the terms of the Order as it related to his participation with the PHP. When the PHP realized his pattern of non-compliance, it attempted to "warn" Dr. Baird and reminded him of his responsibility to participate.

Dr. Baxter also was aware that Dr. Baird was not meeting with Dr. Pedigo on the two times weekly as required by the Board Order. Dr. Baxter's records indicate that Dr. Baird resumed sessions with Dr. Pedigo in September 2000. Reading from his file, Dr. Baxter indicated that Dr. Baird's next session was approximately four weeks later and then the next session was over five months later. Dr. Baxter believed that from the period of April 2002 through August 2002, Dr. Baird only attended nine sessions. He also reported that from October 2002 through April 2003, Dr. Baird only attended ten sessions with Dr. Pedigo. According to Dr. Baxter, Dr. Baird had a similar pattern in his attendance of sessions with Dr. Pedigo. Dr. Baird would cancel appointments at the last minute or just never show up for scheduled appointments. Dr. Baxter, when he was made aware of Dr. Baird's non-compliance, also reminded Dr. Baird of his obligations of twice weekly sessions with Dr. Pedigo. Dr. Baxter testified that he knew of two specific occasions when the PHP informed Dr. Baird on his non-compliance with the terms of the Board's Order. Eventually, the PHP informed the Board of Dr. Baird's failure to comply with the Board's Order.

Dr. Baird did not have any questions for Dr. Baxter.

D.A.G. Simmons offered the following into evidence.

P-1 The Board's Order of Final Revocation dated July 16, 1992.

P-2 The Board's Order of Limited Reinstatement of Licensure dated June 23, 2000.

P-3 Correspondence to Dr. Baird from the Board of Medical Examiners and Dr. Baxter.

P-4 Correspondence to the Board of Medical Examiners from Drs. Pedigo and Baxter.

P-5 Correspondence to Dr. Baxter from Dr. Pedigo.

P-6 Preliminary Evaluation Committee Hearing Transcript dated June 4, 2003.

P-7 Correspondence to Whom It May Concern from Dr. Pedigo dated November 4, 2001.

P-8 Correspondence to Dr. Baxter from Dr. Pedigo dated October 18, 2002.

P-9 Correspondence to Dr. Baxter from Dr. Pedigo dated April 24, 2003.

Dr. Baird did not raise any objection to the evidence proffered and the Board admitted P-1 through P-9 into evidence.

Dr. Baird did not call any witnesses. Dr. Baird, however, spoke to the Board and agreed with the Attorney General's assertions that he was not fully compliant in attending his psychotherapy sessions. He again reminded the Board that from February through April, 2003, his wife was in the military overseas and that he was the primary caretaker for his seventeen year old son. He told Dr. Pedigo about this and believed that Dr. Pedigo understood why he was not attending. Additionally, he pointed out that some of the meetings did not occur because of vacation schedules of himself and Dr. Pedigo. Not all sessions that were missed, according to Dr. Baird, were because he refused to attend in disregard of the Board's Order. He continued by explaining that the last time he attempted to meet with Dr. Pedigo, he learned that Dr. Pedigo was refusing to continue in therapy with him because of an outstanding bill of approximately \$8,500. Dr. Baird believed that he was covered for these sessions under his insurance plan and this was the first time that anyone mentioned to him the outstanding balance. He has attempted to get the necessary information to submit the claims, however according to Dr. Baird, Dr. Pedigo's office is not cooperating. Dr. Baird also stated that he has attempted to propose a payment plan to Dr. Pedigo, but again, Dr. Pedigo refuses to cooperate with him.

Dr. Baird informed the Board that recently he has met with Rev. Reading from the PHP and Rev. Reading has agreed to meet him in Egg Harbor Township on a monthly basis. Dr. Baird believed that he would be more compliant with the requirement to participate with the PHP on a going forward basis. He further explained that having to travel to Dr. Pedigo in Philadelphia and/or the PHP also added to his inability to comply.

Dr. Baird also asked the Board to take into consideration that whenever he is in the presence of a female patient, he has a mandatory chaperone with him. He also promised the Board that it had his word that if in the future, there is any question concerning his conduct, he would immediately surrender his license. He assured the Board that because of his life change and adherence to the principles of the Bible, he is never in a position in which his conduct can be mis-perceived. He only associates with his wife, his family and his church family. With this support in place and because of his strong religious beliefs, he would never hurt another human being. He pledged his word that he would comply with the Board's Order and continue with participation with the PHP and any mandated psychotherapy sessions.

In closing, D.A.G. Simmons stated that the overwhelming evidence before the Board demonstrates Dr. Baxter's long and continued disregard for the terms of the Board's Order. While Dr. Baird has spoken about his life changes, she reminded the Board that during his testimony, he never addressed any change in his professional attitude as it related to adherence to the Board's law or its Orders. Dr. Baird has offered a multitude of excuses,

she continued, but he did not, because he cannot, point to any instance in which he asked the Board to amend its Order. Instead, Dr. Baird, sua sponte, decided the terms with which he would comply. She stated that Dr. Baxter testified that Dr. Baird was continually non-compliant in his attendance of sessions with the PHP, as well as Dr. Pedigo. Dr. Baxter testified that when the PHP learned of the non-compliance, he reminded Dr. Baird of the requirements of the Board Order. Instead of complying, Dr. Baird continued to disregard the terms of his Order. She reminded the Board that in spite of Dr. Baird's assertion that he no longer needed therapy, Dr. Pedigo put in writing to the PHP the need for Dr. Baird to continue in therapy and to be continually monitored. D.A.G. Simmons urged the Board to revoke Dr. Baird's license to practice medicine and surgery in the State of New Jersey as this was the only option to protect the health, safety and welfare of the citizens of New Jersey.

Dr. Baird, in closing, asked the Board to recognize that a person can change. He reminded the Board that his nightmare began over eleven years ago and in the interim, he has experienced a life change. He is no longer the person he was back then in light of his acceptance of the tenets of Jesus Christ. He honestly believed that in asking Dr. Baxter for a reduction in the therapy sessions that it was the same as asking the Board. He assured the Board that he was not a predator and that his actions were never meant to be perceived as a flagrant disregard or disrespect for the Board's Order. He pleaded with the Board for another chance, pledging his word that he would never commit any untoward behavior in the future.

The Board voted to go into Executive Session for deliberation and advice of counsel. Deputies, other than counseling staff, left the room, along with other members of the public present.

The Board returned to open session with all parties present and announced the following motion.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED IN FAVOR OF THE ATTORNEY GENERAL'S MOTION, BASED ON THE EVIDENCE PRESENTED AND THE TESTIMONY HEARD. THE BOARD FOUND GROUNDS FOR DISCIPLINARY ACTION BASED ON REPEATED AND CONTINUOUS VIOLATIONS OF THE BOARD'S ORDER OF GRANTING THE REINSTATEMENT OF LIMITED LICENSE, WHICH REQUIRED ONGOING PARTICIPATION OF PSYCHOTHERAPY WITH DR. PEDIGO AND THE PHYSICIANS' HEALTH PROGRAM.

The Board asked Dr. Baird if he wished to present anything in mitigation of penalty that he had not presented during his case -in-chief.

Dr. Baird reiterated that he pledged his word that he would comply with any future Order of the Board. He asked the Board for the chance to continue with his psychotherapy sessions and suggested that he find someone closer to his home. He also asked the Board to recognize that he already has demonstrated his willingness to participate with the PHP in light of the new arrangements that he has made to meet on a monthly basis. Dr. Baird also asked the Board to take into consideration his pledge that in the event any allegation against his character surfaces in the future, he would immediately surrender his license. He assured the Board that he lives by Christian principles and asked for another chance.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REVOKE DR. BAIRD'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY.

OLD BUSINESS

1. CHANG, Ming Z., M.D. (License #MA 41830)
KYREAKAKIS, Andrew J., P.C.
GELBER, Joan D., D.A.G. for Complainant

Attached was a letter from Respondent's counsel, Mr. Kyreakakis, seeking Board approval for various courses as it related to the potential reinstatement of Dr. Chang.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE DR. CHANG'S

REQUEST AS IT RELATED TO THE MEDICAL COURSE ONLY. IT DID NOT APPROVE THE CHANGE IN ETHICS COURSE AS IT APPEARED TO BE LIMITED IN ITS TOPICS.

Drs. Houston and Moussa were not present for discussion and vote in this matter.

2. HAGEN, Idella K., M. D. (License #MA39025)
HANLON, Gerard E., Esq. For Respondent
PALAN, Tobey, D.A.G. For Complainant

On August 26, 2000, the Respondent was charged with knowingly and purposely causing the death of her two elderly parents in Chatham, New Jersey.

On February 6, 2002, the respondent was found Not Guilty by Reason of Insanity (NGRI) and Dr. Hagen was committed to the Department of Human Services, pursuant to N.J.S.A. SC:4-8. Respondent is presently committed to the Trenton Psychiatric Hospital

Dr. Hagen entered into a Provisional Order of Discipline (POD) on January 13, 2003 where the Attorney General sought the indefinite suspension of Dr. Hagen's license until such time as she can demonstrate mental competence.

D.A.G. Palan requested that the Board determine whether Respondent's enclosed March 24, 2003 letter submission to Executive Director William Roeder merited modification or withdrawal of the POD; established a need for further proceedings, such as an evidentiary hearing, or does not persuade the Board that there were issues which merit further consideration, in which case a Final Order of Discipline (FOD) would be entered.

The Attorney General reiterated that there was ample basis to finalize the POD as proposed.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FINALIZE THE PROVISIONAL ORDER DISCIPLINE.

Dr. Robins abstained from vote in this matter.

3. JECK, Charles N., D.O. (License #MB 53808)
POPLAR, Carl D., Esq., for Respondent
GARCIA, Alexandra D.A.G. for Complainant

Enclosed for Board consideration was Dr. Charles Jeck's September 15, 2003 letter to Executive Director William Roeder requesting permission from the Medical Board to pay his State fines and penalty over the period of the next year or two.

The Respondent was proposing to pay \$150.00 over the year or a percentage of the fine up front, until he finds full time employment. Also attached were the minutes from the September 10, 2003 meeting at which time the Board granted Mr. Poplar's request of extension of payment from Dr. Jeck in the amount of \$13,613.00 for the assessed costs in this matter which were due 90 days from the filing of the enclosed Consent Order on May 5, 2003.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY DR. JECK'S REQUEST AND DIRECTED DR. JECK TO PROVIDE THE APPROPRIATE FINANCIAL DOCUMENTATION PROVING FINANCIAL HARDSHIP WITHIN 30 DAYS, OR OTHERWISE PAY FINES AND PENALTY IN FULL.

Dr. Ricketti recused from discussion and vote in this matter and left the table.

4. NASEERUDDIN, Khaja, M.D. (License # MA 41882)
(DICK, Sandra Y., Counseling D.A.G.)
LABUE, Anthony F., Esq. For Respondent

SIMMONS, Mary Kate, D.A.G. for Complainant

At last month's Board meeting, the Board considered the Attorney General's Motion for Reimbursement of Costs. It was reported out that total costs in this case were \$8,200. However, a mistake was made in the calculation and the corrected cost amount is \$10,200. This matter was before the Board for approval of the corrected amount. All pertinent documents for review in this matter were enclosed.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE CORRECTED AMOUNT OF \$10,200.

5. LEE, Jack, M.D. (License# MA63872)
KERN, Steven/WEIR, Bonnie, Esqs. For Respondent
GELBER, Joan D., D.A.G. for Complainant

Attached for Board consideration were Respondent's Motion to Dismiss Administrative Complaint with attached Exhibits dated October 31, 2003, the State's Opposition to Motion to Dismiss the complaint and Cross Motion by the Attorney General for Summary Decision in Favor of Complainant, with Appendix dated November 3, 2003, Respondent's Reply Memorandum of Law in opposition to the Attorney General's cross motion for Summary Decision and in reply to the State's opposition to Respondent's Motion to Dismiss the Complaint dated November 7, 2003 and the Attorney General's Response to Respondent's Reply to Cross Motion by the Attorney General for Summary Decision dated November 10, 2003.

The Board, however, only considered the issue concerning the Motion to Dismiss the Administrative Complaint at the November 12, 2003 meeting.

The Board voted to go into Executive Session for deliberation and advice of counsel. Deputies, other than counseling staff, left the room, along with other members of the public present.

The Board returned to open session with all parties present and announced the following motion.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE RESPONDENT'S REQUEST TO TRANSFER THIS MATTER TO THE OAL DETERMINING THAT IT HAS THE ABILITY TO DETERMINE THE LEGAL ISSUES. THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY RESPONDENT'S MOTION TO DISMISS THE COMPLAINT BECAUSE THE FACTS ALLEGED, IF PROVEN, COULD SUPPORT THE FINDINGS OF VIOLATIONS OF THE BOARD'S STATUTES AND REGULATION.

THE BOARD NOTED THAT RESPONDENT HAS FAILED TO ANSWER THE COMPLAINT AND DIRECTS THE RESPONDENT TO ANSWER THE COMPLAINT WITHIN SEVEN DAYS OF NOTIFICATION BY THE BOARD OR RESPONDENT WILL BE CONSIDERED IN DEFAULT.

FINALLY, THE BOARD ORDERED THAT THE PARTIES SHOULD BE PREPARED TO PRESENT ORAL ARGUMENT ON THE MOTION FOR SUMMARY DECISION AND TO ADDRESS MITIGATION, IF NECESSARY, AT THE DECEMBER 10, 2003 MEETING.

6. SAMAD, Fasih, M.D. (Unlicensed)
BROWN, Joyce, D.A.G. for Complainant

Enclosed for Board consideration was D.A.G. Brown's November 5, 2003 letter to the Board requesting that Dr. Samad be denied licensure for reasons stated in her letter. A Provisional Order of Denial of Licensure (PODL) was entered on July 24, 2003 seeking the denial of Dr. Samad's application for Licensure

Dr. Samad's October 6, 2003 letter to the Board requested modification of the enclosed Final Order of Denial of Licensure (FODL) which was filed by the Board and served on Dr. Samad on or about September 29, 2003.

Finally, Dr. Samad requested that he be issued guidelines for rehabilitation. D.A.G. Brown stated that the Board may refer him to the conditions set forth in the Rehabilitated Convicted Offenders Act, N.J.S.A.2A:168A-1 et seq.

Attached for Board review was the September 29, 2003 Final Order of Denial of Licensure

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY DR. SAMAD'S REQUEST FOR RECONSIDERATION AND REAFFIRMED ITS PRIOR POSITION TO FILE THE FINAL ORDER OF DENIAL OF LICENSURE FOR THE REASONS EXPRESSED BY DEPUTY ATTORNEY GENERAL BROWN.

7. SISTER-STATE MATTERS - FINALIZATION OF PROPOSED ORDER OF DISCIPLINE BROWN, Joyce/PALAN, Tobey D.A.G.'s

A Provisional Order of Discipline (POD) was filed on July 15, 2003 and the Attorney General was proposing to finalize this order based on Sister-State actions or convictions for the following physician listed below:

1. ZUTTAH, Silas H., M.D.
(D.A.G. Palan)

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FINALIZE THE PROVISIONAL ORDER OF DISCIPLINE.

8. SAHA, Debabrata, M.D. - SISTER-STATE MATTER (License # MA55746)
BROWN, Joyce/PEREZ, Mileidy D.A.G.'S

An Order of Summary Suspension was filed by the Board on September 23, 2003.

Submitted for Board consideration was D.A.G. Perez's October 30, 2003 memo to the Board and Dr. Saha's October 18, 2003 letter to Executive Director William Roeder requesting consideration for reinstatement of his license. As noted in D.A.G. Perez's memo, in light of Respondent's request for reinstatement, it was necessary for the Board to schedule Respondent to appear before a PEC to address the conduct and the sanctions imposed by the Missouri Board and the subsequent Sister-State disciplinary action taken by Oklahoma, Pennsylvania and Florida. In lieu of a PEC appearance, prior to reinstatement, the Board may offer Respondent the opportunity to enter into a Consent Order in which there is a proposal for a reprimand and a fine, the amount to be determined by the Board.

Also enclosed for Board review was the Order of Summary Suspension with attachments.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO AUTHORIZE A CONSENT ORDER OF REPRIMAND WITH A FINE IN THE AMOUNT OF \$1,000.

NEW BUSINESS

None.

The meeting ended at 2:30 p.m.

Respectfully Submitted,

Glenn Farrell, Esq.,
Vice-President
Chairperson for Open
Disciplinary Matters

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